IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

..

:: JUDGMENT ::

Smt. Malki & Ors. Vs. Yasin Khan & Ors.

S.B. CIVIL MISC. APPEAL NO.444/1993.

Against the award dated 21.08.1993 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.31/1990.

Date of Judgment :: 30th November 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellant.
Mr. U.C.S. Singhvi, for the respondent.

...

BY THE COURT:

The claimants have preferred this appeal against the award dated 21.08.1993 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.31/1990 seeking enhancement over the amount of compensation awarded by the Tribunal because of accidental death of Dhanna Ram, husband of the appellant No.1 and father of the appellants Nos. 2 to 6.

Only the quantum of compensation being the subject matter of this appeal, a brief reference to the background facts would suffice. The claimants filed the claim application on 31.01.1990 with the averments that the deceased Dhanna Ram was about 45 years in age and was earning about Rs.1000/- per month while working as a miner at the stone-mines. Narrating the incident, the claimants averred that on 20.12.1989 at about 7:00 p.m., the deceased Dhanna Ram while walking home from his work at the Mines at Soorsagar, Jodhpur having crossed the by-pass road and gone down the kuchcha way on the right-hand side of the road was hit by a truck bearing registration No. RNJ 3657 and was crushed beneath its front wheel; he was removed to the hospital where he was declared dead; that the accident was caused by speed driving of the truck on the wrong side of the road; that there was no negligence or omission of care on the part of the deceased Dhanna Ram; and that the accident occurred exclusively for the fault of the truck driver, non-applicant No.1. For quantification of compensation, the claimants averred that the deceased was earning wages at about Rs.35/- per day and would have earned upto the age of 70 years. The claimants claimed Rs.3,00,000/- towards pecuniary loss and another Rs.2,00,000/- towards non-pecuniary loss and alleged the liability of the non-applicants,

driver, owner and insurer of the truck in question. The non-applicant Insurer while generally denying the claim averments for want of knowledge, alleged that the driver was not holding valid driving licence; that the vehicle was not being plied in the control of the insured; that the accident occurred for the negligence of the deceased himself; that in any case the non-applicant was not liable beyond contributory negligence, if there be any. Quantum of compensation was also put to contention with the submissions that the deceased was not a miner and was not earning Rs.35/- per day. The non-applicants Nos. 1 and 2 on the other hand while denying negligence on the part of the truck driver and denying other averments for want of knowledge; alleged that the application was not filed in prescribed form and was, therefore, liable to be rejected. On the pleadings of the parties, the Tribunal framed following issues:

> "1.आया दिनांक 20-12-1989 को शाम के करीबन 7 बजे जब धन्नाराम सूरसागर खानियों से अपने घर भाखरी पैदल आ रहा था, जब धन्नाराम बाई पास रोड़ सूरसागर से जोधपुर जाने वाले रास्ते पर सड़क को पूरी क्रोस कर सड़क के दाहिनी ओर आये हुए कच्चे रास्ते पर चला गया तब अप्रार्थी सं01 ने ट्रक नम्बर आर.एन.जे 3657 को अत्यन्त तेज गति एवं लापरवाही से चलाकर रोंग साईड में जाकर धन्नाराम के टक्कर मारी जिससे उसके शरीर पर गम्भीर चोटें आई व उसकी बाद में मृत्यु हो गई?

2. आया प्रार्थीगण कुल 5,00,000/-रूपये बतौर क्षतिपूर्ति अप्रार्थीगण से प्राप्त करने के अधिकारी हैं?

3. आया वक्त दुर्घटना वाहन चालक वाहन स्वामी के नियोजन, हित-हितार्थ एवं निर्देशन में वाहन को नहीं चला रहा था। यदि ऐसा है तो इसका क्या असर है?

4. आया वक्त दुर्घटना वाहन चालक के पास वैध लाईसेन्स नहीं था। यदि ऐसा है तो इसका क्या असर है?

5. आया वक्त दुर्घटना मृतक स्वंय चौराहा लापरवाही व असावधानी से क्रोस कर रहा था अत: उक्त दुर्घटना उसकी स्वंय की लापरवाही के कारण घटित हुई । यदि ऐसा है तो इसका क्या असर है ?

6. अनुतोष ?"

The claimants examined Malki, wife of the deceased as PW-1; Narpat, an eyewitness to the accident as PW-2; and Pappuram, son of the deceased and another eyewitness to the accident as PW-3. The claimants also produced relevant documentary evidence from the police investigation papers and Postmortem Report. However, the non-applicants did not lead any evidence.

After hearing the parties, the learned Judge of Tribunal found in issue No.1 that the accident occurred for

rash and negligent driving of the truck that resulted in causing fatal injuries to Dhanna Ram; and in issue No.5 it was noticed that the non-applicants have failed to lead any evidence to show any contributory negligence on the part of the deceased who had already crossed the road before being hit by the truck. Issues Nos.3 and 4 were also decided against the non-applicants.

Taking up quantification of compensation in issue No.2, the learned Judge in the first place addressed to the question about the age of the deceased. The claimants asserted his age at 45 years whereas the postmortem report gave out the age at 60 years. The learned Judge, however, observed that the postmortem carries only estimate on the age and the doctor conducting postmortem had not been produced in evidence and nothing was available before the Tribunal to find as to on what basis his age was stated at 60 years in the postmortem report. The learned Judge, therefore, accepted the age of the deceased at 45 years as asserted by the claimants.

However, on the question of income and loss of contribution, the learned Judge observed that the job deceased was said to be engaged in, i.e. of a stone-miner, could not be effectively carried upto the age of 70 years and he could have at the most worked upto the age of 55 years.

The learned Judge also observed that the deceased was stated to be of 45 years but the doctor stated his age at 60 years and that was definitely indicative of the fact that the deceased was physically weak. Taking his monthly income at Rs.1,050/- and deducting one-third on his personal expenditure, the learned Judge took loss of dependency at Rs.700/- per month and applying a multiplier of 10, assessed pecuniary loss at Rs.84,000/- (8,400 x 10). The learned Judge further allowed Rs.10,000/- towards non-pecuniary loss for the claimants; however, while dealing with the claim on account of loss of consortium, observed that the deceased was of 45 years as asserted by the claimants but because of his weak physical condition, the doctor stated his age at 60 years in the postmortem report and, therefore, according to the learned Judge, there was no justification for allowing any amount to the wife of the deceased towards loss of consortium. On the considerations aforesaid, the Tribunal assessed total loss for the claimants at Rs.94,000/- and deducting Rs.25,000/- wherefrom, allowed them Rs.69,000/- as compensation. The Tribunal though allowed interest @ 12% per annum but only from the date of award.

The claimants have, therefore, come up in appeal assailing the award being too low and grossly inadequate on quantum of compensation and have prayed for enhancement

with the submissions that the Tribunal has restricted the award of compensation on all the counts by taking loss of contribution on the lower side and applying inadequate multiplier of 10 only and denying even reasonable non-pecuniary loss and not awarding interest pendente lite. The insurer of the offending vehicle has opposed with the submissions that the impugned award remains that of just compensation in the facts and circumstances of the case and there is no scope for enhancement.

Having given a thoughtful consideration to the submissions made on behalf of the parties, having scanned through the entire record and having examined the impugned award, this Court is clearly of opinion that the award on its quantification of compensation remains grossly inadequate and deserves modification by upward revision.

So far income of the deceased is concerned, learned Judge of the Tribunal has rightly taken it at Rs. 1,050/- per month with reference to his wages stated by the claimants at Rs. 35/- per day. The learned Judge has further rightly taken loss of dependency at Rs. 700/- per month after deducting one-third on personal expenditure of the deceased. However, the learned Judge has seriously erred in applying multiplier of 10 only while putting up unjustified conjectures about the age and earning capacity of the deceased.

The wife of the deceased stated her age at 40 years in her statements before the Tribunal and his elder son gave out that he was 18 years old at the time of accident. The claimants asserted the age of the deceased at about 45 years but the Postmortem Report, on the other hand stated the age of the deceased at 60 years. Such discrepancy has been rightly dealt with by the Tribunal with the consideration that the there was no other material on record to disbelieve the assertion of the age of the deceased as made by the claimants and accepted his age at 45 years. Such an estimate does not appear incorrect when examined in the light of the facts that his elder son was about 18 years in age, the youngest daughter was of 5 years, and the wife was about 40 years in age. The learned Judge has also rightly discarded the age stated in the postmortem report, being only an estimate of the doctor concerned. However, when it came to the question of application of multiplier, the learned Judge assumed that the deceased was not likely to earn beyond the age of 55 years because, according to the learned Judge, he was probably not in good health and for this reason the doctor conducting Post-mortem stated his age at 60 years. The observations made by the learned Judge are not of valid presumption in law, nor stand in conformity with the record of the case. The assumptions made by the learned Judge are

not valid even as conjectures what to say of inference. This apart, so far the physique of the deceased is concerned, the observation that he was weak and infirm and that is why his age was taken at 60 years by the doctor are not correct and are contrary to the very postmortem report sought to be referred. It has clearly been reported in the postmortem report that,-

"The subject is well built, well nourished."

The learned Judge has obviously omitted to consider such observations made by the doctor concerned on external appearance of the body of the deceased.

In view of the age of the deceased and the claimants, there appears no reason not to apply the multiplier of 13 minimum in this case, treating the deceased in the age group of 45-50 years. Pecuniary loss allowed by the Tribunal at Rs. 84,000/- with application of multiplier of 10, therefore, deserves modification and the claimants deserve to be allowed pecuniary loss at Rs. 1,09,200/- (8,400/- x 13) rounded off to Rs.1,09,000/-.

The learned Judge has allowed non-pecuniary loss only at Rs. 10,000/- and has even observed that the deceased was not maintaining good health, and therefore, the wife is not entitled for any amount towards loss of consortium! This court is constrained to disapprove such

observations being shocking and preposterous. Such observations are rather poor reflection of the approach of the learned Judge of the Tribunal towards the meaning of consortium in the context of matrimonial relationship; and of comprehension of loss of consortium for a wife upon loosing her husband in an accident. The wife of the deceased deserves to be allowed Rs.8,000/- towards loss of consortium and the children of the deceased Rs.4,000/- each towards loss of love, affection and guidance of their father. The claimants are, therefore, entitled for non-pecuniary loss at Rs. 28,000/-. Another amount of Rs.2,000/- deserves to be allowed towards funeral expenses. The claimants, therefore, deserve to be compensated for the loss in the sum of Rs.1,39,000/- (1,09,000/- + 28,000/- + 2,000) as against the amount of Rs. 94,000/- assessed by the Tribunal. The Tribunal has awarded Rs. 69,000/- after adjusting Rs. 25,000/- awarded under no-fault liability. After such adjustment, the award of compensation deserves to be made in the sum of Rs. 1,14,000/- (1,39,000 – 25,000). The claimants shall, therefore, be entitled for further amount of Rs. 45,000/- (1,14,000/- – 69,000/-) towards compensation.

The Tribunal has committed yet another error in allowing interest only from the date of award. No reason worth the name is available on record for which the claimants have

been deprived of interest from the date of filing of claim application. This court is clearly of opinion that in a vehicular accident claim case, ordinarily the claimants are entitled for interest from the date of filing of claim application as envisaged by Section 171 of the Motor Vehicles Act, 1988 and the claimants ought not be deprived of reasonable rate of interest from the date of filing of the claim application unless they could be held guilty of causing delay in disposal of the case deliberately and intentionally. In the present case, there is no such circumstance available on record for which the claimants be deprived of reasonable rate of interest on the compensation amount from the date of filing of the claim application.

The claim application was filed on 31.01.1990 and the Tribunal made the award after trial on 21.08.1993. The Tribunal of course allowed interest at the then prevailing rate of 12% per annum but only from the date of award. In the circumstances of the case, and in view of enhancement being allowed herein, it appears that interest of justice shall be served if the claimants are allowed interest @ 9% per annum on the entire award amount of Rs.1,14,000/- from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is allowed. The impugned award dated 21.08.1993 is

modified; the claimants are allowed compensation in the sum of Rs. 1,14,000/- in place of the amount of Rs. 69,000/- awarded by the Tribunal. The claimants shall, therefore, the entitled for further amount of Rs. 45,000/-. However, the claimants shall be entitled for interest at the rate of 9% per annum from the date of filing of claim application on the entire modified award amount of Rs. 1,14,000/- .

It shall be required of the respondent No.3 to deposit the amount now payable within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall carry out apportionment and disbursement of the award amount amongst the claimants in the manner and proportion as contemplated under the impugned award. There shall be no order as to costs of this appeal

(DINESH MAHESHWARI), J.

//Mohan//